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## DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 60

RIN 2900-AN79

Fisher House and Other Temporary Lodging

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

**SUMMARY:** This final rule amends Department of Veterans Affairs (VA) regulations concerning Fisher Houses and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA health care facility. This final rule better describes the application process for this lodging and clarifies the distinctions between Fisher Houses and other temporary lodging provided by VA. This final rule generally reflects current VA policy and practice, and conforms to industry standards and expectations.

**DATES:** This final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Deborah Amdur, Chief Consultant, Care Management and Social Work Service (10P4C), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-6780. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This document adopts as a final rule without substantive change a proposed rule amending VA regulations. On March 16, 2012, VA published in the Federal Register (77 FR 15650) a proposal to amend its regulations concerning Fisher Houses and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA health care facility. Under 38 U.S.C. 1708, VA may furnish certain persons with temporary lodging in a Fisher House or other appropriate facility in connection with the examination, treatment, or care of a veteran. VA implements its authority under section 1708 in 38 CFR part 60. This authority to provide temporary lodging assists VA in providing appropriate treatment and care to veterans, because individuals receiving such treatment or care often respond better when they are accompanied by relatives, close friends, or caregivers.

Interested persons were invited to submit comments to the proposed rule on or before May 15, 2012, and we received no comments. Therefore, we make no changes based on comments. However, we make minor changes from the proposed rule in certain places in §§ 60.15 and 60.20, because the phrases “VA health care facility,” “VA medical center,” and “VA medical facility” were inadvertently used interchangeably with regards to: Where an application for temporary lodging may be obtained and where a completed application must be returned (§ 60.15(a)); the location of non-utilized beds in VA facilities that may serve as temporary lodging (§ 60.15(b)(3) and § 60.20(d)); the type of VA facility whose Director may determine whether hotels or motels are appropriate temporary lodging (§ 60.15(b)(4)); and where a denied application may be referred (§ 60.15(b)(7)). The intended usage was to refer only to a “VA health care facility” throughout the proposed rule, because this phrase broadly encompasses all VA

facilities that are under the jurisdiction of the Veterans Health Administration and VA. By contrast, a “VA medical center” is a specific type of “VA health care facility” that distinctly provides, among other things, 24-hour inpatient care. VA has never limited, and it was not the intent of the proposed rule to limit criteria for temporary lodging, to only be considered in the context of a “VA medical center.”

Use of the broader phrase “VA health care facility” in this final rule reflects current and longstanding VA practice, and the proposed rule emphasized that it would generally reflect current VA practice. See 77 FR 15650, 15652-15653. Additionally, use of the phrase “VA health care facility” is consistent with 38 CFR part 60 prior to this revision, versus the phrase “VA medical facility.” The public therefore should be familiar with the phrase “VA health care facility,” as well as the intent of the proposed rule. Indeed, the fact that we received no comments on the inadvertent usage of the phrases “VA medical center” and “VA medical facility” in the proposed rule indicates that the public did not understand these phrases to propose new limitations regarding temporary lodging provided by VA.

Changes in this final rule to consistently use “VA health care facility” additionally do not broaden substantive criteria for temporary lodging from the proposed rule, because the proposed rule accurately used the phrase “VA health care facility” when describing substantive criteria to the public. Therefore, consistent use of the broader phrase “VA health care facility” in the final rule is not a substantive change from the proposed rule that requires an additional notice and comment period. For instance, the proposed rule clearly stated in § 60.2 that Fisher Houses and other temporary lodging may be located at or near a “VA health care facility.” See § 60.2 as proposed, and

unchanged by this final rule, for the definitions of “Fisher House” and “Other temporary lodging,” which base location of temporary lodging at or near a “VA health care facility.” The substantive criteria in proposed § 60.2, related to where temporary lodging may be located, correctly stated that temporary lodging may be located at or near a VA health care setting that is broader than a “VA medical center.” Proposed § 60.15(a), however, incorrectly stated that applications for temporary lodging could be obtained from and returned to only “VA medical center[s].” Proposed § 60.15(a) intended to alert the public that applications for temporary lodging can be obtained from and returned to those places where temporary lodging may be located. Therefore, the final rule must accurately indicate that applications for temporary lodging may be obtained from and returned to a “VA health care facility,” and not only obtained from and returned to a “VA medical center.” See § 60.15(a) as revised by this rulemaking, versus § 60.15(a) as proposed. Accurately stating in the final rule that an application for temporary lodging may be obtained from and returned to a “VA health care facility” versus a “VA medical center” does not affect the location of temporary lodging, and does not affect any other substantive criteria such as eligibility for temporary lodging or access to temporary lodging. The change in this final rule in § 60.15(a) to use the phrase “VA health care facility,” therefore, is not substantive but rather merely standardizes the use of the correct and intended phrase, where otherwise multiple phrases will be confusing.

As another example, the proposed rule clearly stated in § 60.15(b)(5) that “the person responsible for coordinating the Fisher House and other temporary lodging program(s) at the VA health care facility of jurisdiction is responsible for making decisions to grant temporary lodging.” The substantive criteria in proposed §

60.15(b)(5), related to VA staff that decide whether to grant temporary lodging, correctly stated that such staff may work in a VA health care setting that is broader than a “VA medical center.” Proposed § 60.15(b)(7), however, incorrectly stated that if temporary lodging is denied, then the application would be referred to VA staff only “at the VA medical center of jurisdiction to determine if other arrangements can be made.”

Proposed § 60.15(b)(7) intended to alert the public that if an application is denied, the application will be referred back to the setting where the original decision was made to determine if other lodging options are available. Therefore, the final rule must indicate that if an application for temporary lodging is denied, that VA will refer the application to a “VA health care facility of jurisdiction” to determine other options, and not limit the referral of the application to only a “VA medical center of jurisdiction.” See § 60.15(b)(7) as revised by this rulemaking, versus § 60.15(b)(7) as proposed. Accurately stating in the final rule that a denied application for temporary lodging is referred back to a “VA health care facility” versus a “VA medical center” does not affect the availability of other lodging options when temporary lodging is denied, and does not affect any other substantive criteria such as eligibility for temporary lodging or access to temporary lodging. The change in this final rule in § 60.15(b)(7) to use the phrase “VA health care facility,” therefore, is not substantive but rather merely standardizes the use of the correct and intended phrase, where otherwise multiple phrases will be confusing.

All other changes to use the broader phrase “VA health care facility” in §§ 60.15 and 60.20 are similarly not substantive, because they merely standardize the use of the correct and intended phrase, where otherwise multiple phrases will be confusing. We amend the language of the proposed rule to remove all mention of a “VA medical

center” or “VA medical facility,” and replace those phrases with “VA health care facility” in this final rule.

Therefore, based on the rationale set forth in the proposed rule and above, VA is adopting the proposed rule as a final rule without substantive change.

#### Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA’s implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 60.15, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or revised collections of information are associated with this final rule. The information collection requirements for § 60.15 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0630.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule does not have a significant

economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule directly affects only individuals and will not directly affect small entities. Any impact on small entities involved in the lodging industry would be indirect and insignificant. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of 5 U.S.C. 603 and 604.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) classifies a “significant regulatory action,” requiring review by OMB, unless OMB waives such review as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations

of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing

Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

List of Subjects in 38 CFR Part 60

Health care, Housing, Reporting and recordkeeping requirements, Travel,  
Veterans.

Approved: September 20, 2012

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John R. Gingrich, Chief of Staff,  
Department of Veterans Affairs.

For the reasons stated in the preamble, VA is revising 38 CFR part 60 as follows:

## PART 60 – FISHER HOUSES AND OTHER TEMPORARY LODGING

Sec.

60.1 Purpose and scope.

60.2 Definitions.

60.3 Other donated temporary lodging.

60.10 Eligibility criteria for Fisher House or other temporary lodging.

60.15 Application process.

60.20 Duration of Fisher House or other temporary lodging.

Authority: 38 U.S.C. 501, 1708.

### § 60.1 Purpose and scope.

This part applies to Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA health care facility.

(Authority: 38 U.S.C. 501, 1708)

### § 60.2 Definitions.

For the purposes of this part:

Accompanying individual means an individual seeking Fisher House or other temporary lodging, who provides familial support or the equivalent of familial support, to a veteran while the veteran is experiencing an episode of care. This term is defined broadly to include relatives, close friends, and caregivers.

Compensation and pension examination means an examination requested by VA's Veterans Benefits Administration to be conducted at a VA health care facility for the purpose of evaluating a veteran's claim.

Episode of care means a course of outpatient treatment, or a period of hospitalization, during which a veteran receives health care under 38 U.S.C. chapter 17, or 38 U.S.C. 8111 or 8153. Examples of episodes of care include (but are not limited to) the following:

- (1) An appointment at a VA health care facility to receive health care or a compensation and pension examination.
- (2) Extended outpatient treatment, such as treatment associated with organ transplant, chemotherapy, or radiation.
- (3) Hospitalization for a critical injury or illness; where death is imminent; or where a veteran is unable to make medical decisions for him/herself and the accompanying individual is authorized to make such decisions on the veteran's behalf.

Fisher House means a housing facility that is located at or near a VA health care facility and was constructed by and donated to VA by the Fisher House Foundation (formerly the Zachary and Elizabeth M. Fisher Armed Services Foundation), or a facility that is treated as if it were Fisher House lodging under § 60.3.

Other temporary lodging includes:

- (1) Lodging at a temporary lodging facility, other than a Fisher House, located at a VA health care facility (generally referred to as a "hoptel");
- (2) A hotel or motel;
- (3) Non-utilized beds at a VA health care facility designated as lodging beds; and

(4) Other donated lodging to be used on a temporary basis in accordance with 38 U.S.C. 1708.

VA means the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 1708)

#### § 60.3 Other donated temporary lodging.

Whenever VA receives, from a source other than the Fisher House Foundation, an undesignated donation of lodging to be used on a temporary basis, the lodging will be designated as if it were Fisher House lodging or be treated as other temporary lodging based upon the types of lodging available in the area. If VA receives a gift that specifies the terms of the lodging provided, VA will use the lodging provided in the manner specified by the donor.

(Authority: 38 U.S.C. 501, 1708, 8103, 8104)

#### § 60.10 Eligibility criteria for Fisher House or other temporary lodging.

(a) General. While a veteran is undergoing an episode of care, VA may provide either Fisher House or other temporary lodging, as appropriate, if the application meets the requirements of this part 60. These are the only types of lodging provided by VA under this part. Note: Lodging provided for under this part will not be used by a person participating in a VA residential treatment program, or as a substitute for participation in such a program.

(b) Eligible persons. (1) Fisher House. VA may provide Fisher House lodging to accompanying individual(s) and, in limited circumstances of immediate need and no

alternative temporary lodging, to a veteran with one or more accompanying individual(s). Fisher House lodging will not be used to lodge unaccompanied veterans or individuals in need of transitional or permanent housing. Note: VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.

(2) Other temporary lodging. VA may provide other temporary lodging to a veteran or to a veteran and his or her accompanying individual(s). Accompanying individuals may not stay in other temporary lodging unless the veteran is also staying in temporary lodging. Note: VA does not impose a general limit on the number of persons who may accompany a veteran, but VA may in specific cases provide lodging to only a specific number of persons due to space or resource limitations.

(c) Condition of the veteran. Fisher House or other temporary lodging will not be provided to a veteran unless the VA official reviewing the application determines, based on the application and on any necessary clinical information, that the veteran is:

- (1) Medically stable and capable of self-care; or
- (2) Accompanied by an individual who is able to provide all necessary care.

(d) Travel time/distance requirement. Fisher House or other temporary lodging may be provided only if the applicant seeking lodging must travel at least 50 miles, or for 2 hours, from his or her home to the VA health care facility. VA may waive these requirements based on exceptional circumstances, such as when the physical condition of an accompanying individual and/or the veteran, inclement weather, road conditions,

or the mode of transportation, make it difficult or dangerous to travel to or return from the VA health care facility without an overnight stay.

(e) Special authority for organ transplant cases. Notwithstanding any other provision of this part, VA may provide Fisher House or other temporary lodging for individuals who must be present on site for evaluation, donation, and care related to their status as an organ donor for a veteran. VA may also provide Fisher House or other temporary lodging for the donor's accompanying individuals at all phases of the transplant process.

(Authority: 38 U.S.C. 501, 1708, 1710(a))

#### § 60.15 Application process.

(a) Obtaining and submitting the application. VA Form 10-0408A is the application for Fisher House and other temporary lodging. Applications may be submitted by mail, telephone, facsimile, in person, or electronically. VA Form 10-0408A is available from any VA health care facility or may be obtained online at <http://vaww4.va.gov/vaforms/medical/pdf/vha-10-0408A-fill.pdf>. The completed application must be submitted as follows:

(1) For Fisher House lodging, to the Fisher House Manager at the VA health care facility of jurisdiction.

(2) For other temporary lodging, to the temporary lodging program coordinator at the VA health care facility of jurisdiction.

(b) Processing applications. (1) Applications are generally processed in the order that they are received by VA, and temporary lodging is then granted on a first

come first serve basis; however, in extraordinary circumstances, such as imminent death, critical injury, or organ donation applications may be processed out of order.

(2) Temporary lodging is granted on a space-available basis, with some consideration given to the compatibility of the applicant(s) and the room(s) available. For example, although VA may require an applicant to share a room with another veteran's accompanying individual, VA would not do so if the persons affected are not the same gender.

(3) Temporary lodging at a VA health care facility, such as non-utilized beds in a VA health care facility, may be made available only if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. Non-utilized beds provided to accompanying individuals must be reassigned to VA patients when necessary.

(4) The Director of the VA health care facility of jurisdiction will determine whether local funding is sufficient to allow the use of temporary lodging in hotels and motels.

(5) Subject to all criteria provided in this part, the person responsible for coordinating the Fisher House and other temporary lodging program(s) at the VA health care facility of jurisdiction is responsible for making decisions to grant temporary lodging. These decisions are considered to be final VA decisions concerning individual medical treatment plans and the scheduling and use of VA lodging facilities, and they are not appealable to the Board of Veterans' Appeals.

(6) If VA denies an application for one type of lodging, such as at a Fisher House, the application will be considered for other temporary lodging and vice versa, if the applicant is eligible.

(7) If VA denies the application for all types of temporary lodging, VA will refer the application to a VA social worker at the VA health care facility of jurisdiction to determine if other arrangements can be made.

(c) Costs for Fisher House and other temporary lodging under this part are borne by VA.

(Authority: 38 U.S.C. 501, 1708)

(The Office of Management and Budget has approved the information collection requirements in this section under OMB control number 2900–0630)

#### § 60.20 Duration of Fisher House or other temporary lodging.

Fisher House or other temporary lodging may be awarded for the following periods:

- (a) While the veteran is undergoing an episode of care.
- (b) While the veteran is hospitalized, if the veteran is admitted to a VA health care facility while undergoing an outpatient episode of care for which temporary lodging was already provided.
- (c) As extended by the appropriate VA clinician or social worker based on an emergency situation or unforeseen circumstances.
- (d) For an indefinite period for accompanying individuals who are visiting veterans hospitalized for an indefinite period, provided that the accompanying individual

is not using a VA health care facility bed. Whether a veteran is hospitalized for an indefinite period will be based upon the treatment or rehabilitation needs of the veteran as determined by the veteran's health care team.

(e) Temporary lodging may be furnished the night before the day of a scheduled appointment if, the veteran leaving home after 8:00 a.m., would be unable to arrive at the VA health care facility by the time of the scheduled appointment.

(f) Temporary lodging may be furnished the night of the scheduled appointment if, after the appointment, the veteran would be unable to return home before 7:00 p.m. When a veteran is undergoing outpatient treatment or procedures the veteran and accompanying individual(s) may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section.

(Authority: 38 U.S.C. 501, 1708)

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